STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM MICHIGAN COURT OF APPEALS
(Whitbeck, C.J., Sawyer and Jansen, JJ.)

KEVIN SMITH,

Plaintiff-Appellee,

Supreme Court No. 132823

v.

Court of Appeals No. 262139

LOUIE KHOURI, D.D.S. AND
LOUIE KHOURI, D.D.S., P.C. and
ADVANCE DENTAL CARE CLINIC, L.L.C.

Oakland County Circuit Court
No. 03-047984-NH

BRIEF OF AMICUS CURIAE MICHIGAN ASSOCIATION FOR JUSTICE

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Interest of Amicus Curiae

The Michigan Association for Justice ("MAJ") is an organization of Michigan lawyers engaged primarily in litigation and trial work. Comprised of more than 1,700 attorneys, the Michigan Association for Justice recognizes an obligation to assist this Court on important issues of law that would substantially affect the orderly administration of justice in the trial courts of this state. This case presents important issues of law, the resolution of which will have a direct and substantial impact upon all attorneys engaged in civil litigation in this state. This Court has invited MAJ to address these important legal issues by filing this Brief Amicus Curiae.

Introduction

This Honorable Court has granted the Defendants-Appellants Application for Leave, requesting that the parties include among the issues to be addressed: (1) whether the trial court evaluated all factors relevant to the determination of a reasonable fee; (2) whether the trial court applied such factors to all the attorneys involved; (3) whether in particular the trial court properly applied factors pertaining to the fees customarily charged in the locality for similar legal services, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services; (4) whether it is relevant to consider the proportionality between the amount of attorney fees and the award of damages; and (5) whether, if the plaintiff retained his attorneys pursuant to a contingent fee agreement, this fact should affect the calculation of reasonable attorney fees on the basis of hourly rates.

While the first three issues are specific to this case only, Amicus Curiae joins the majority opinion of the Court of Appeals, as well as the Plaintiff-Appellee in their conclusion that the trial

court did not abuse its discretion in awarding the amount of attorney fees. As stated by the Court of Appeals:

> We have previously noted that "a trial court is in the best position to assess an attorney's contribution to a case because trial courts are aware of the strengths and weaknesses of cases before them, the time and effort expended by the attorneys, and changes in the parties' leverage resulting from changes in counsel (e.g., due to attorneys' skill or reputation)." Here, the trial court concluded that $450 per hour was a reasonable rate for Smith's senior counsel Robert Gittleman, and we agree. Applying the relevant factors, the trial court stated:
>
> > There's no question Mr. Gittleman's a recognized practitioner in the area of the dental malpractice and has superlative standing in that area, has tried numerous cases. His skill, time and labor involved here was evidence [sic] from the professional way in which this case was tried. The amount in question, the results achieved . . . that was significant. The case was of difficulty because of the complexity of the issues involved. . . . . There were significant expense [sic] incurred based on my review of the billings and taking all of those factors into account, I think that the 450 dollars rate is reasonable. [Opinion, p 6].

Indeed, the trial court did not specifically analyze, on the record, the professional standing and experience of senior counsel, Michael Tashman, or associate counsel, Lori Goldstein and Tracie Gittleman. Nevertheless, the trial court clearly reviewed the billings and, in granting the entire amount of attorney fees, the trial court "acknowledged the complexity of dental malpractice actions, as well as the skill, time and cost expended to obtain the favorable verdict in this instant case." (Opinion, p 7). As this Court held in *Wood v DAIIE*, 413 Mich App 573, 588 (1982), "the trial court need not detail its findings as to each specific factor considered."

Moreover, Defendants-Appellants were given the opportunity to conduct an evidentiary hearing to determine the appropriate hourly rate and defense counsel ***specifically declined***, stating, "As far as the hourly rate, I don't think that an evidentiary hearing is required . . . "(TR 3/23/05, p

27, Defendants-Appellants' Appendix, p 77a). When the trial court specifically asked whether Defendants-Appellants took issue with the $450.00 hourly rate requested by Plaintiff's counsel, defense counsel replied, "I do have a problem with it, I think that the Court of Appeals has gone multiple directions on what an appropriate hourly fee is." (TR 3/23/05, p 28, Defendants-Appellants' Appendix, p 78a). Again, the trial court afforded the Defendants-Appellants an opportunity to conduct an evidentiary hearing on this issue, but defense counsel declined, "I've raised my arguments." The trial court confirmed this rejection, asking, "So you want me to make the call based on what has been submitted to me?" Counsel conceded, "Correct and the issues presented today." (TR 3/23/05, p 28, Defendants-Appellants' Appendix, p 78a). Thus, it is rather disingenuous for Defendants-Appellants to complain that the trial court abused its discretion in accepting the evidence presented by Plaintiff-Appellee[1] in determining a reasonable hourly rate.

Defendants-Appellants advocate that "the starting point for determining what is a reasonable attorney fee is determining the reasonable hourly rate charged in the community. This should be determined using empirical evidence." (Defendants-Appellants' Brief, p 16). This is precisely what the trial court did. "Empirical" evidence is derived from experience or observation, not scientific data. Here, the trial court concluded, "The Court can also take judicial notice of the fact that senior trial practitioners do bill on an hourly rate earned for their trial activities in the area of 450 dollars

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[1] Plaintiff-Appellee submitted a 1990 Oakland County Circuit Court opinion awarding Mr. Gittleman $200 per hour for case evaluation sanctions in a dental malpractice action, a 1998 Genesee County Circuit Court Order awarding Mr. Gittleman $300 per hour for case evaluation sanctions in a dental malpractice action, a 2004 Oakland County Circuit Court Order wherein Mr. Gittleman was awarded $400 per hour for case evaluation sanctions in a dental malpractice action (which was also defended by counsel for Defendants-Appellants herein and this Court denied leave by Order dated January 29, 2007), as well as his curriculum vitae detailing his extensive experience in the area of dental malpractice.

or more in this locale and therefore the Court does believe the rate is reasonable." (TR 3/23/05, p 33, Defendants-Appellants' Appendix 83a). Given the evidence presented by counsel and the trial court's familiarity with the issues based on years' of experience, the trial court's award of $450 as an hourly fee certainly does not fall outside the principled range of outcomes, especially in light of the fact that Defendants-Appellants elected to present the issue to the court on the briefs and arguments and waived an evidentiary hearing.

With regard to the issues of whether it is relevant to consider the proportionality between the amount of attorney fees and the award of damages and whether a contingent fee agreement should affect the calculation of a plaintiff attorney's reasonable attorney fees, Amicus Curiae submits that the plain text of MCR 2.403(O)(6) does not limit the prevailing party's recovery of attorney fees in any manner other than a "***reasonable hourly or daily rate*** as determined by the trial judge." In fact, a 1987 amendment to the rule added the italicized language to "prevent" trial judges from awarding sanctions calculated as a percentage of the verdict to plaintiffs who had contingent fee agreements with their lawyers. See *Temple v. Kelel Distributing Co, Inc*, 183 Mich App 326, 332 (1990). This amendment transpired as the result of the work of the Mediation Evaluation Committee appointed by this Court in 1986. The Committee certainly could have proposed an amendment that took a contingent fee agreement into consideration or limited the award based on the proportionality to the verdict. However, the Committee rejected these considerations. It is clear that the Committee declined to consider these factors because they have no direct bearing on the amount of legal services necessitated by the rejection of the case evaluation.

In fact, the Court of Appeals expressly rejected consideration of the plaintiff's contingent fee agreement in *Temple* and directed the trial court to award "a reasonable attorney fee based on a

reasonable hourly or daily rate." *Id.* at 333. There is absolutely no basis to re-interpret longstanding precedent to make a contingent fee agreement a factor to consider. Similarly, the proportionality of the verdict and the amount of attorney fees is not relevant to the consideration either. For precisely the same reason that awarding an attorney fee based upon a contingent fee agreement in a multi-million dollar case could result in a plaintiff receiving a six-figure sanction award that represents a disproportionate hourly rate in comparison to the actual amount of hours expended,[2] limiting a *plaintiff's* award of attorney fees to 1/3 of the verdict in an action that resulted in a substantially smaller verdict would result in an unreasonably low hourly rate.

Amicus Curiae submits that limiting a case evaluation sanction award of attorney fees on the basis of the existence of a contingent fee and/or the proportionality of the amount of attorney fees to the amount of the verdict would ***only*** effect counsel who represent plaintiffs and, thus, would result in disparate treatment of plaintiffs. For example, in the event that a jury returns a verdict of no cause for action, a defendant would seek case evaluation sanctions on the basis of the actual hours expended as a result of the plaintiff's rejection of the case evaluation award, regardless of whether the plaintiff sought a verdict in the millions or merely the thousands. Such an approach is consistent with the purpose of the mediation sanction rule, which is to deter protracted litigation and encourage settlement. Conversely, limiting an award of attorney fees on the basis of the existence of a contingent fee and/or the amount of the verdict would unfairly punish counsel who represent

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[2] In *Temple,* the trial court's award of attorney fees in the sum of $ 145,343.14 was not based on an hourly or daily rate; rather, it was based on the existence of a contingent fee contract. Plaintiff's counsel claimed that he incurred 136 hours of legal work as a consequence of defendant's rejection of the mediation evaluation. The Court of Appeals concluded that, "[a]ccepting as true the reasonableness of the number of hours claimed, the award represents an hourly rate in excess of $1,000 an hour. We hold that such a rate for legal work is patently unreasonable." *Id.* at 332.

plaintiffs, as well as plaintiffs who have cases with damages less than six figures by ***grossly undervaluing*** the fees for attorney services necessitated by a defendant's rejection of the case evaluation award. A defendant's rejection of a case evaluation award leaves a plaintiff with no option but to persist in the litigation. Punishment of the plaintiff by awarding a nominal attorney fee is not warranted. Certainly, such an approach would not encourage defendants to settle low damage value actions nor would it avoid protracted litigation.

The plain text of MCR 2.403(O), as well as the case law interpreting it, make it clear that an award of attorney fees under the rule should be based on a reasonable hourly or daily rate, without a limitation based on the existence of a contingent fee agreement or the amount of the verdict. There is no basis to modify well-established precedent in this matter. As set forth by the State Bar of Michigan in its Amicus Brief, to the extent that this Court may believe that the text of MCR 2.403(O) warrants modification, the rule-making process should be followed so that individual members of the bar are afforded an opportunity to comment after adequate notice.

Finally, Amicus Curiae submits that this Court should explicitly reject Defendants-Appellants' and Amicus Attorney General's arguments that a reasonable hourly rate should be based on the data reported in *A Snapshot of the Economic Status of Attorneys in Michigan: Excerpts from the 2003 Economics of Law Practice Survey*. As set forth more fully herein, the results of the survey were based on only about 1200 questionnaire responses, which represented approximately 4% of the more than 31,000 practitioners in Michigan in 2002. This survey can hardly be said to be "representative" of a "reasonable hourly rate" for an Oakland County dental malpractice plaintiff's attorney. In fact, according to the 2007 State Bar of Michigan Economics of Law Practice Survey, only 1% of the respondents practice in the area medical malpractice.

Instead, Amicus Curiae submits that more appropriate salary sources would include the Laffey Matrix published by the United States Attorney's Office (Appendix p 1a), adjusted for locality pay differentials (Appendix pp 3a-4a), as well as an "adjusted" Laffey Matrix which has been adopted by courts in other jurisdictions (Appendix pp 5a-6a). Amicus Curiae assert that, in addition to any salary surveys and other evidence submitted to support a reasonable hourly rate, a trial court should continue evaluate the factors set forth in *Wood* in exercising its discretion in awarding an attorney fee for case evaluation sanctions.

Argument

I. Standard of Review

The amount of sanctions awarded by a trial court is reviewed for an abuse of discretion. *Campbell v Sullins,* 257 Mich App 179, 198 (2003). The abuse of discretion standard recognizes that there may be no single correct outcome in certain situations; instead, there may be more than one reasonable and principled outcome. When the trial court selects one of these principled outcomes, it has not abused its discretion and so the reviewing court should defer to the trial court's judgment. An abuse of discretion occurs when the trial court chooses an outcome falling outside the principled range of outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388 (2006); *People v Babcock*, 469 Mich 247, 269 (2003).

The rules governing the construction of statutes apply with equal force to the interpretation of court rules. *Smith v Henry Ford Hosp*, 219 Mich App 555, 558 (1996). This Court must read the court rule according to its plain language and give "effect to the meaning of the words as they ought to have been understood by those who adopted them." *Buscaino v Rhodes*, 385 Mich 474, 481

(1971). Every word or phrase of a statute or court rule should be given its commonly accepted meaning; however, where a word or phrase is expressly defined, courts must apply it in accordance with that definition. MCL 8.3a; *Western Michigan Univ Bd of Control v Michigan*, 455 Mich 531, 539 (1997); *Tryc v Michigan Veterans' Facility,* 451 Mich 129, 136 (1996). Statutes and court rules should be construed so as to prevent absurd results, injustice, or prejudice to the public interest. *Franges v General Motors Corp*, 404 Mich 590, 612 (1979).

II. The Plain Text of MCR 2.403(O) Does Not Limit the Prevailing Party's Recovery of Attorney Fees in Any Manner Other Than a "Reasonable Hourly or Daily Rate" and, Thus, Neither the Proportionality of the Amount of Fees to the Award of Damages Nor the Existence of a Contingent Fee Agreement Should Be Considered by a Trial Court in Determining a Reasonable Attorney Fee

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"[A] party who rejects a case-evaluation award is generally subject to sanctions if he fails to improve his position at trial." *Campbell v Sullins,* 257 Mich App 179, 198 (2003). In particular, MCR 2.403(O)(1) provides:

> If a party has rejected an evaluation and the action proceeds to verdict, that party ***must*** pay the opposing party's ***actual costs*** unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation. [emphasis added.]

MCR 2.403(O)(6) defines "actual costs" as:

> (a) those costs taxable in any civil action, and
>
> (b) a reasonable attorney fee ***based on a reasonable hourly or daily rate*** as determined by the trial judge for services necessitated by the rejection of the case evaluation. [Emphasis added.]

"The purpose of this rule 'is to encourage settlement, deter protracted litigation, and expedite

and simplify the final settlement of cases' by placing the burden of litigation costs on the party who demands a trial by rejecting the case evaluation award." *Rohl v Leone,* 258 Mich App 72, 74 (2003) (citation omitted). See also *Bien v Venticinque,* 151 Mich App 229, 232(1986) (citing 2 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), p. 437).

In *Crawley v Schick,* 48 Mich App 728, 737 (1973), the Court of Appeals set forth the following guidelines to consider in determining the reasonableness of an attorney's fee:

(1) The professional standing and experience of the attorneys;
(2) The skill, time, and labor involved;
(3) The amount in question and the results achieved;
(4) The difficulty of the case;
(5) The expenses incurred; and
(6) The nature and length of the professional relationship with the client.

This Court adopted these guidelines in *Wood v DAIIE*, 413 Mich App 573(1982). However, this Court further held that "the trial court need not detail its findings as to each specific factor considered." *Id.* at 588. Moreover, pursuant to MCR 2.517(A)(4), decisions on motions do not require findings of fact. *Michigan Nat'l Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 241 (1993).

A. Reasonable Hourly Rate

As stated by the United States Supreme Court, "[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v Eckerhart*, 461 US 424, 433 (1983). Moreover, as the *Hensley* Court's opinion underscored, "*[w]here a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.*" *Id.*, at 1940 (emphasis original).

Michigan appellate courts have instructed that it is appropriate for the Court to consider

attorney fee surveys in determining an appropriate hourly rate. See, e.g., *Jager v Nationwide Truckers, Inc*, 252 Mich App 464, 489 (2002) (approving use of Michigan Lawyers Weekly and Michigan State Bar fee surveys), rev'd on other grounds, *Elezovic v. Ford Motor Co*, 472 Mich 408 (2005).

Amicus Curiae submits that, contrary to Defendants-Appellants' and Amicus Attorney General's arguments, the data reported in *A Snapshot of the Economic Status of Attorneys in Michigan: Excerpts from the 2003 Economics of Law Practice Survey*, does not provide adequate support to determine a reasonable hourly rate, particularly with regard to a dental malpractice action. The results of the survey of 2002 salaries were based on only about 1200 questionnaire responses. This small number of respondents represented ***a mere 4% of the more than 31,000 practitioners in Michigan in 2002***. This survey can hardly be said to be "representative" of a "reasonable hourly rate" for an Oakland County dental malpractice plaintiff's attorney. In fact, according to the 2007 State Bar of Michigan Economics of Law Practice Survey, only 1% of the respondents practice in the area medical malpractice. While such a survey could be worthy of consideration in some limited matters, Amicus Curiae asserts that it is not fairly representative of a reasonable hourly rate to be afforded to most personal injury attorneys.

Instead, Amicus Curiae submits that more appropriate salary sources would include the Laffey Matrix published by the United States Attorney's Office (Appendix p 1a), adjusted for locality pay differentials (Appendix pp 3a-4a), as well as an "adjusted" Laffey Matrix which has been adopted by courts in other jurisdictions (Appendix pp 5a-6a).

The Laffey Matrix is based on hourly rates allowed by the District Court in *Laffey v. Northwest Airlines, Inc*, 572 F Supp 354 (DDC 1983) *aff'd in part, rev'd in part on other grounds,*

746 F.2d 4 (DC Cir 1987), *cert denied,* 472 U.S. 1021 (1985). The original *Laffey* matrix presented a grid which established hourly rates for lawyers of differing levels of experience during the period from June 1, 1981, through May 31, 1982. Subsequently, the rates have been adjusted annually by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of $5. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year (Appendix p 3a). See *Covington v District of Columbia,* 57 F 3d 1101, 1105, 1109 (DC Cir 1995), *cert denied,* 516 US 1115 (1996).

The Laffey Matrix has been adopted by courts across the country as an objective measure of reasonable hourly rates when adjusted for locality pay differentials. See, e.g., *Arch v Glendale Nissan*, 2005 WL 1421140, *1 (ND Ill 2005); *In re HPL Technologies, Inc Securities Litigation*, 366 F Supp 2d 912, 921-922 (ND Cal 2005). In *HPL Technologies*, the Court relied on the federal locality pay differentials in adjusting the Laffey Matrix upward to reflect the higher cost of living between the San Francisco Bay area and the Washington D.C. area (where the Laffey Matrix originated).

Here, the federal locality pay differential indicates that the pay differential between Detroit and Washington, D.C., is approximately +3% (Appendix pp 3a-4a). Thus, the average billing rate for an attorney with 20 or more years of experience in 2005-2006, adjusted for the locality pay differential, would be approximately $417.00 per hour. Given that Mr. Gittleman had nearly 40 years' of experience in 2005, it can hardly be said that the trial court's award of $450.00 per hour was outside the range of reasonable and principled outcomes.

Amicus Curiae submits that a more accurate survey of hourly attorney fees is represented by the "adjusted" Laffey Matrix (Appendix pp 5a-6a), which the court adopted in *Salazar v District of Columbia*, 123 F Supp 2d 8, 14-15 (DC Cir 2000). The rates in the adjusted Matrix are computed by multiplying a base hourly rate from 1988-89 (as opposed to the 1981-82 base rate in the original Matrix) by an "Adjustment Factor" – the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor. As plaintiffs' economic expert, Dr. Michael Kavanaugh set forth in *Salazar*, adjusting the Matrix with a national index assumes that the rate of change of prices for legal services is about the same everywhere. Dr. Kavanaugh maintained that the Consumer Price Index for U.S. City Average, Legal Service Fees ("Legal Services Index") maintained by the U.S. Department of Labor, Bureau of Labor Statistics is a better measure of the change in prices for legal services in Washington, D.C., than the Consumer Price Index for Washington, D.C., Maryland, Virginia, All Items ("DC Merto CPI"). Dr. Kavanaugh explained:

> the D.C. Metropolitan CPI does not contain a separate component for legal services and that such services are included in a much larger, more generalized category of "other goods and services." Because "economists use as specific an index as possible to determine changes in prices in a part of an industry, such as here changes of prices in legal services in the District of Columbia," . . . "components of the Consumer Price Index are the better tool to use to update an industry's prices rather than the entire Consumer Price Index." [*Salazar*, 123 F Supp 2d at 15.]

Here, Mr. Gittleman's $450.00 hourly rate is far less than the $598.00 hourly rate set forth for attorneys with twenty or more years' experience in 2005-2006 within the Adjusted Laffey Matrix (Appendix, p 5a). Moreover, Mr. Gittleman's rate is far less than the $600 hourly rate approved by the Court of Appeals in *May v City of Detroit*, 2003 WL 21362985, *12 (Mich App 2003) ($600 per

hour approved for lead trial counsel, Geoffrey Fieger).

The rates set forth in Adjusted Laffey Matrix, as opposed to the State Bar of Michigan Economics of Law Practice Survey are far more representative of the hourly rates for personal injury litigation counsel. This fact is reflected in the orders cited by Plaintiff-Appellee, as well as recent orders entered by Oakland County Circuit Court Judges. For example, in *Page v Gloverson,* Oakland County Circuit Court No 04-058923-NH, in an order dated September 1, 2006, Judge Steven Andrews awarded plaintiff an attorney fee of $475.00 per hour (for work performed by attorney Marc Lipton) for case evaluation sanctions in a medical malpractice action (Appendix pp 7a-12a). Similarly, in a November 13, 2007 order, Judge Andrews awarded plaintiff an attorney fee in the amount of $500.00 per hour (for work performed by attorneys Robert Wendzel and Raymond Horenstein) in an action for No-Fault benefits (Appendix pp 13a-16a).

Accordingly, Amicus Curiae submits that this Court should reject the arguments of Defendants-Appellants and Amicus Attorney General in terms of adopting the rates set forth in the State Bar of Michigan Economics of Law Practice Survey and, instead, adopt the Adjusted Laffey Matrix as an objective measure of reasonable hourly rates for a trial court to consider in conjunction with the *Wood* factors.

B. Neither the Proportionality of the Amount of Attorney Fees and the Award of Damages Nor the Existence of a Contingent Fee Agreement is Relevant to the Consideration of the Time and Effort Expended by Trial Counsel

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The plain text of MCR 2.403(O)(6) does not limit the prevailing party's recovery of attorney fees in any manner other than a "***reasonable hourly or daily rate*** as determined by the trial judge." As set forth above, a 1987 amendment to the rule added the italicized language to "prevent" trial

judges from awarding sanctions calculated as a percentage of the verdict to plaintiffs who had contingent fee agreements with their lawyers. See *Temple*, 183 Mich App at 332. In considering the proposed amendment, the Mediation Evaluation Committee specifically ***rejected*** an amendment that would permit an award to be based upon a contingent fee agreement. It is clear that the Committee declined to permit trial courts to consider this factor because it has no direct bearing on the amount of legal services necessitated by the rejection of the case evaluation.

In fact, **the Court of Appeals expressly rejected consideration of the plaintiff's contingent fee agreement in *Temple*** and directed the trial court to award "a reasonable attorney fee based on a reasonable hourly or daily rate." *Id.* at 333. In *Temple,* Plaintiff's counsel claimed that he incurred 136 hours of legal work as a consequence of defendant's rejection of the mediation evaluation. The trial court awarded attorney fees in the sum of $ 145,343.14 based on the existence of a contingent fee contract. The Court of Appeals concluded that, "[a]ccepting as true the reasonableness of the number of hours claimed, the award represents an hourly rate in excess of $1,000 an hour. We hold that such a rate for legal work is patently unreasonable." *Id.* at 332.

An arbitrary award of a $1,000 hourly fee is precisely what the Mediation Evaluation Committee sought to avoid when it amended MCR 2.403(O)(6) to specify that a reasonable attorney fee is to be based on a reasonable hourly or daily rate. Indeed, awarding a plaintiff an attorney fee based upon a contingent fee agreement in a multi-million dollar case could result in a plaintiff receiving a six-figure sanction award that represents a disproportionate hourly rate in comparison to the actual amount of hours expended. Nonetheless, limiting a *plaintiff's* award of attorney fees to 1/3 of the verdict in an action that resulted in a substantially smaller verdict would result in an unreasonably low hourly rate.

For example, consider a case with a case evaluation award of $25,000 that the plaintiff accepted and the defendant rejected. Assume that, before trial, the defendant offered zero dollars to settle the matter and the plaintiff is forced to take the case to trial. Following a jury trial, the jury returns a verdict of $25,000. As a result of being compelled to try the case because of the defendant's refusal to engage in settlement discussions, the plaintiff would have incurred costs and a reasonable attorney fee for trial depositions, trial preparation and trial attendance. If the award of case evaluation sanctions is to be based on the contingent fee agreement, Plaintiff would be limited to recovery of an attorney fee of less than $8,250 (1/3 of the verdict, without taking into consideration the expenses to be deducted first). Based on a hourly rate of $450.00 as awarded in this action, the plaintiff would be limited to recovery of approximately 18 hours of attorney fees, which greatly undervalues the amount of time truly expended in pre-trial preparation, trial and post-trial proceedings.

Conversely, if the same case resulted in a verdict of no cause for action, the defendants would seek full recovery for all of the hours actually expended by defense counsel, regardless of the size of the verdict and regardless of the existence of a contingent fee agreement between the plaintiff and his attorney.

There is absolutely no basis to re-interpret longstanding precedent to make the existence of a contingent fee agreement or the amount of the verdict factors to consider. Such limitations would ***only*** effect counsel who represent plaintiffs or those plaintiffs who have cases with damages less than six figures by ***grossly undervaluing*** the fees for attorney services necessitated by a defendant's rejection of the case evaluation award. This approach is not only inconsistent with the purpose of the case evaluation sanction rule, it would result in extremely disparate treatment of plaintiffs. A

defendant's rejection of a case evaluation award leaves a plaintiff with no option but to persist in the litigation, and punishment by awarding a nominal attorney fee is not warranted. Certainly, this method would not encourage defendants to settle low value damage actions nor would it avoid protracted litigation.

The existence of a contingent fee agreement has absolutely no bearing on the amount of time expended by plaintiff's counsel, nor does it assist in the determination of a reasonable hourly rate. Plaintiff's counsel could obtain a multi-million dollar verdict in one case, resulting in a one-third contingent fee which translates into an hourly rate in excess of $1,000 as in *Temple,* and later obtain a $25,000 verdict resulting in one-third fee translating into a nominal hourly rate of less than $100.00. Neither of these scenarios reflect what that particular attorney is reasonably worth on an hourly basis. Rather, the relevant inquiry involves the attorney's skill, time, and labor expended, as well as the difficulty of the case, in conjunction with the factors set forth in *Wood.* Case law also permits consideration of surveys. Amicus Curiae maintains that the Adjusted Laffey Matrix provides courts with an objective guideline in determining reasonable hourly rates.

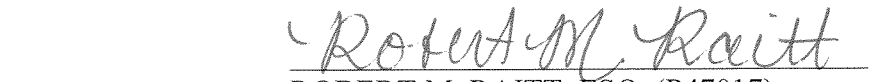
Conclusion

The plain text of MCR 2.403(O) and the case law interpreting it, make it clear that an award of attorney fees under the rule should be based on a reasonable hourly or daily rate, ***without*** a limitation based on the existence of a contingent fee agreement or the amount of the verdict. There is no basis to modify well-established precedent in this matter. Instead, the trial courts should continue to have the discretion to determine a reasonable hourly or daily rate, taking into consideration the *Wood* factors. Amicus Curiae further submits that this Court should adopt the

Adjusted Laffey Matrix as an additional objective guideline for the trial courts to consider in determining a reasonable hourly rate, in conjunction with the *Wood* factors.

As set forth by the State Bar of Michigan in its Amicus Brief, to the extent that this Court may believe that the text of MCR 2.403(O) warrants modification, the rule-making process should be followed so that individual members of the bar are afforded an opportunity to comment after adequate notice.

Respectfully Submitted,



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Dated: December 3, 2007

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LAFFEY MATRIX 2003-2008

Experience	03-04	04-05	05-06	06-07	07-08
20+ years	380	390	405	425	440
11-19 years	335	345	360	375	390
8-10 years	270	280	290	305	315
4-7 years	220	225	235	245	255
1-3 years	180	185	195	205	215
Paralegals & Law Clerks	105	110	115	120	125

Years (Rate for June 1 - May 31, based on prior year's CPI-U)

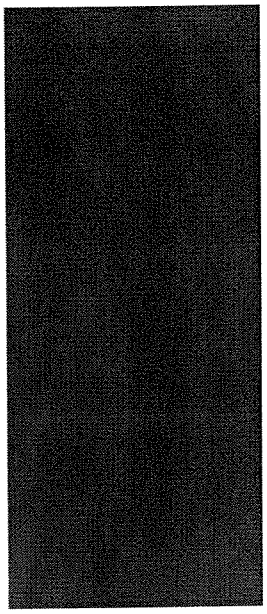
Explanatory Notes

1. This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix is intended to be used in cases in which a "fee-shifting" statute permits the prevailing party to recover "reasonable" attorney's fees. *See, e.g.,* 42 U.S.C. § 2000e-5(k) (Title VII of the 1964 Civil Rights Act); 5 U.S.C. § 552(a)(4)(E) (Freedom of Information Act); 2 U.S.C. § 2412 (b) (Equal Access to Justice Act). The matrix does not apply in cases in which the hourly rate is limited by statute. See 28 U.S.C. § 2412(d).

2. This matrix is based on the hourly rates allowed by the District Court in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985). It is commonly referred to by attorneys and federal judges in the District of Columbia as the "Laffey Matrix" or the "United States Attorney's Office Matrix." The column headed "Experience" refers to the years following the attorney's graduation from law school. The various "brackets" are intended to correspond to "junior associates" (1-3 years after law school graduation), "senior associates" (4-7 years), "experienced federal court litigators" (8-10 and 11-19 years), and "very experienced federal court litigators" (20 years or more). *See Laffey*, 572 F. Supp. at 371.

3. The hourly rates approved by the District Court in *Laffey* were for work done principally in 1981-82. The Matrix begins with those rates. *See Laffey*, 572 F. Supp. at 371 (attorney rates) & 386 n.74 (paralegal and law clerk rate). The rates for subsequent yearly periods were determined by adding the change in the cost of living for the Washington, D.C. area to the applicable rate for the prior year, and then rounding to the nearest multiple of $5 (up if within $ of the next multiple of $5). The result is subject to adjustment if appropriate to ensure that the relationship between the highest rate and the lower rates remains reasonably constant. Changes in the cost of living are measured by the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.

4. Use of an updated *Laffey* Matrix was implicitly endorsed by the Court of Appeals in *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516, 1525 (D.C. Cir. 1988) (en banc). The Court of Appeals subsequently stated that parties may rely on the updated *Laffey* Matrix prepared by the United States Attorney's Office as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area. See *Covington v. District of Columbia*, 57 F.3d 1101, 1105 & n.



14, 1109 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1115 (1996). Lower federal courts in the District of Columbia have used this updated *Laffey* Matrix when determining whether fee awards under fee-shifting statutes are reasonable. *See, e.g., Blackman v. District of Columbia* 59 F. Supp. 2d 37, 43 (D.D.C. 1999); *Jefferson v. Milvets System Technology, Inc.*, 986 F. Supp. 6, 11 (D.D.C. 1997); *Ralph Hoar & Associates v. Nat'l Highway Transportation Safety Admin.*, 985 F. Supp. 1, 9-10 n.3 (D.D.C. 1997); *Martini v. Fed. Nat'l Mtg Ass'n*, 977 F. Supp. 482, 485 n.2 (D.D.C. 1997); *Park v. Howard University*, 881 F. Supp. 653, 654 (D.D.C. 1995).

Last Updated on 07/06/2007

This page can be found on the web at the following url:
http://www.opm.gov/oca/07tables/html/dcb.asp

U.S. Office of Personnel Management

Ensuring the Federal Government has an effective civilian workforce

Salaries and Wages

SALARY TABLE 2007-DCB

INCORPORATING THE 1.70% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 18.59%

FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE-NORTHERN VIRGINIA, DC-MD-PA-VA-WV

(See http://www.opm.gov/oca/07tables/locdef.asp for definitions of locality pay areas.)

(TOTAL INCREASE: 2.64%)

EFFECTIVE JANUARY 2007

Annual Rates by Grade and Step

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	19722	20380	21037	21689	22345	22730	23378	24031	24057	24664
2	22174	22700	23435	24057	24325	25040	25755	26470	27186	27901
3	24194	25000	25806	26613	27419	28226	29032	29838	30645	31451
4	27159	28064	28969	29874	30779	31684	32589	33493	34398	35303
5	30386	31399	32412	33425	34437	35450	36463	37476	38488	39501
6	33872	35001	36130	37259	38388	39517	40646	41775	42903	44032
7	37640	38895	40150	41405	42659	43914	45169	46423	47678	48933
8	41686	43075	44465	45855	47245	48635	50025	51415	52805	54194
9	46041	47576	49110	50645	52180	53714	55249	56783	58318	59852
10	50703	52393	54083	55773	57463	59153	60843	62533	64222	65912
11	55706	57564	59421	61278	63135	64992	66849	68706	70563	72421
12	66767	68993	71219	73445	75671	77897	80123	82349	84575	86801
13	79397	82044	84691	87338	89985	92632	95279	97926	100573	103220
14	93822	96950	100077	103204	106331	109459	112586	115713	118840	121967
15	110363	114042	117721	121399	125078	128757	132435	136114	139793	143471

- *Salaries and Wages*
- *Compensation Administration Home Page*

U.S. Office of Personnel Management 1900 E Street NW, Washington, DC 20415 | (202) 606-1800 | TTY (202) 606-2532

SALARY TABLE 2007-DET
INCORPORATING THE 1.70% GENERAL SCHEDULE INCREASE AND A LOCALITY PAYMENT OF 21.53%
FOR THE LOCALITY PAY AREA OF DETROIT-WARREN-FLINT, MI
(See http://www.opm.gov/oca/07tables/locdef.asp for definitions of locality pay areas.)
(TOTAL INCREASE: 2.15%)

EFFECTIVE JANUARY 2007

Annual Rates by Grade and Step

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
1	$ 20,210	$ 20,885	$ 21,558	$ 22,227	$ 22,899	$ 23,294	$ 23,957	$ 24,627	$ 24,654	$ 25,276
2	22,724	23,263	24,016	24,654	24,928	25,661	26,394	27,127	27,860	28,592
3	24,793	25,620	26,446	27,273	28,099	28,925	29,752	30,578	31,405	32,231
4	27,833	28,760	29,687	30,615	31,542	32,469	33,396	34,324	35,251	36,178
5	31,140	32,177	33,215	34,253	35,291	36,329	37,367	38,405	39,443	40,480
6	34,711	35,868	37,025	38,182	39,339	40,496	41,653	42,810	43,967	45,124
7	38,574	39,859	41,145	42,431	43,717	45,003	46,288	47,574	48,860	50,146
8	42,719	44,143	45,568	46,992	48,416	49,841	51,265	52,689	54,114	55,538
9	47,183	48,755	50,328	51,901	53,473	55,046	56,618	58,191	59,764	61,336
10	51,960	53,692	55,424	57,156	58,887	60,619	62,351	64,083	65,815	67,546
11	57,088	58,991	60,894	62,797	64,700	66,603	68,506	70,410	72,313	74,216
12	68,423	70,704	72,985	75,266	77,547	79,828	82,109	84,390	86,672	88,953
13	81,366	84,078	86,791	89,503	92,216	94,928	97,641	100,353	103,066	105,778
14	96,148	99,353	102,558	105,763	108,967	112,172	115,377	118,582	121,786	124,991
15	113,099	116,869	120,639	124,409	128,179	131,949	135,719	139,488	143,258	145,400 *

* Rate limited to the rate for level IV of the Executive Schedule (5 U.S.C. 5304 (g)(1)).

Locality Table - Detroit

4a

LAFFEY MATRIX

History

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See the Matrix

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Year	Adjustmt Factor**	Paralegal/ Law Clerk	Years Out of Law School *				
			1-3	4-7	8-10	11-19	20 +
6/01/07-5/31/08	1.0516	$146	$268	$329	$475	$536	$645
6/01/06-5/31/07	1.0256	$139	$255	$313	$452	$509	$614
6/1/05-5/31/06	1.0427	$136	$249	$305	$441	$497	$598
6/1/04-5/31/05	1.0455	$130	$239	$293	$423	$476	$574
6/1/03-6/1/04	1.0507	$124	$228	$280	$405	$456	$549
6/1/02-5/31/03	1.0727	$118	$217	$267	$385	$434	$522
6/1/01-5/31/02	1.0407	$110	$203	$249	$359	$404	$487
6/1/00-5/31/01	1.0529	$106	$195	$239	$345	$388	$468

Adjusted Laffey Matrix

5a

6/1/99-5/31/00	1.0491	$101	$185	$227	$328	$369	$444
6/1/98-5/31/99	1.0439	$96	$176	$216	$312	$352	$424
6/1/97-5/31/98	1.0419	$92	$169	$207	$299	$337	$406
6/1/96-5/31/97	1.0396	$88	$162	$198	$287	$323	$389
6/1/95-5/31/96	1.032	$85	$155	$191	$276	$311	$375
6/1/94-5/31/95	1.0237	$82	$151	$185	$267	$301	$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., McDowell v. District of Columbia, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); Salazar v. Dist. of Col., 123 F.Supp.2d 8 (D.D.C. 2000).

* "Years Out of Law School" is calculated from June 1 of each year, when most law students graduate. "1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). "4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier "1-3" from June 1, 1996 until May 31, 1999, would move into tier "4-7" on June 1, 1999, and tier "8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

Adjusted Laffey Matrix

9/1/06 Order

STATE OF MICHIGAN,

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

'06 SEP -1 P 2:44

VALORIE PAGE, Personal Representative of the Estate of RICHARD PAGE, deceased,

Plaintiff,

-vs-

Case No. 04-058923-NH
Hon. Steven N. Andrews

JAY GLOBERSON, DOMINIC LAGO, JR. NORTHLAND ANESTHESIA ASSOCIATES, P.C., a Michigan corporation, and PROVIDENCE HOSPITAL AND MEDICAL CENTERS, INC., a Michigan non-profit corporation,

Defendants

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 1st day of September, 2006

A. Badalucco

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KEVIN P. HANBURY (P39468
HEBERT, ELLER & CHANDLER PLLC
Attorneys for Globerson, Lago and Northland Anesthesia
30805 Telegraph Road, Suite 200
Bingham Farms, MI 48025

LAUREL F. McGIFFERT (P31667)
PLUNKETT & COONEY, PC
Attorneys for Defendant St. John Providence Hospital
535 Griswold, Suite 2400
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OPINION AND ORDER

At a session of said Court, held in the Court House, in the City of Pontiac, Oakland County, Michigan, this SEP 0 1 2006.

PRESENT: THE HONORABLE STEVEN N. ANDREWS, Circuit Judge

9/1/06 Order

This matter is before the Court for decision following an evidentiary hearing on Plaintiff's motion for case evaluation sanctions pursuant to MCR 2.403. Having heard the arguments of counsel and received the exhibits, the Court finds as follows:

This case arises out of an anoxic brain injury sustained by Plaintiff's decedent, Richard Page, as a result of the medical malpractice of Defendants Globerson, Lago and Northland Anesthesia Associates. Plaintiff's claims against Co-Defendant St. John Providence Hospital were premised on its vicarious liability for the acts and errors of the anesthesiology Defendants.

Immediately before trial, the parties agreed to enter binding arbitration. The Arbitration Award subsequently entered provides that Plaintiff shall not disclose the amount of the Award except as required by law. The Arbitration Award is attached to the instant motion, for review by the Court only.

Arbitration was conducted on June 26, 2006 and an Award for Plaintiff was entered was entered on July 12, 2006 (Plaintiff's Exhibit 2: Arbitration Award). The Award provides that Plaintiff shall be entitled to interest, costs and attorney fees that are available by statute or court rule (*Id.*). Plaintiff attaches a bill of costs and itemization of each expense (Plaintiff's Exhibit 3: bill of costs).

Under MCR 2.403(O)(6), actual costs are defined as "those costs taxable in any civil action, and . . . a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation." "Those costs taxable in any civil action" are enumerated in MCL 600.2405:

9/1/06 Order

(1) Any of the fees of officers, witnesses, or other persons mentioned in this chapter or in chapter 25, unless a contrary intention is stated.
(2) Matters specially made taxable elsewhere in the statutes or rules.
(3) The legal fees for any newspaper publication required by law.
(4) The reasonable expense of printing any required brief and appendix in the supreme court, including any brief on motion for leave to appeal.
(5) The reasonable costs of any bond required by law, including any stay of proceeding or appeal bond.
(6) Any attorney fees authorized by statute or by court rule.

MCL 600.2421b defines "costs and fees" as "the normal costs incurred in being a party in a civil action."

Defendants bring several objections to the costs and fees sought by Plaintiff.

First, Defendants object to the hourly rate for attorney fees sought.

A reasonable attorney fee must be based on a reasonable hourly or daily rate for services necessitated by the rejection of the evaluation. MCR 2.403(O)(6)(b); *Haliw v Sterling Heights*, 471 Mich 700, 711; 691 NW2d 753 (2005). In determining a reasonable hourly rate, the Court should consider relevant criteria, including: "the professional standing and experience of the attorney; the skill, time and labor involved; the amount in question and the results achieved; the difficulty of the case; the expenses incurred; and the nature and length of the professional relationship with the client." *Temple v Kelel Distributing Co, Inc*, 183 Mich App 326, 333; 454 NW2d 610 (1990). Reasonable fees are not equivalent to actual fees charged. *Cleary v The Turning Point*, 203 Mich App 208, 212; 512 NW2d 9 (1993). The Court notes that the award of actual costs is mandatory, not discretionary, and only the amount or reasonableness of the attorney fees is left to the trial court's discretion. *Great Lakes Gas Transmission Ltd v Markel*, 226 Mich App 127, 130; 573 NW2d 61 (1997).

9/1/06 Order

In regard to the amount and reasonableness of the attorney fees sought by Plaintiff, the Court finds that the hourly rate of $475 for Mr. Lipton is warranted in view of his professional standing and experience. In regard to the skill, time and labor involved, the Court notes that this case involved complex medical issues and expert medical testimony, which required extensive trial preparation and expense. There were many pretrial motions with additional filings regarding the arbitration proceeding; the quality of the filings by Plaintiff's counsel is self-evident. Indeed, Plaintiff obtained a favorable award in arbitration. The Court's finding in this regard is based on the factors outlined above as well as the Court's own personal observations of the many pretrial proceedings in this case.

Second, Defendants object to several specific amounts of attorney fees. Defendants object to the 75 hours set forth as trial preparation time, in view of the parties' agreement to arbitrate. The Court finds no merit in Defendants' objection. The record reflects that the agreement to arbitrate was not executed until November 30, 2005; trial was scheduled for December 5, 2005. Clearly, extensive trial preparation was crucial.

Defendants object to the 20 hours set forth as negotiation of the agreement to arbitrate. The Court finds no merit in Defendants' objection. The record reflects that there were nine revisions of the agreement to arbitrate.

Defendants object to 16 hours set forth as time for preparation of Plaintiffs' arbitration summary. The Court finds no merit in Defendants' objection. The record reflects a well-written and well-supported summary. The extensive amount of time spent in drafting this agreement is apparent.

9/1/06 Order

Defendants object to 24 hours set forth as time for preparation of motions for summary disposition and in limine. The Court finds no merit in this objection, in view of the complexity of the case and the motions.

In sum, the Court finds that the amount of attorney fees sought by Plaintiff is reasonable.

Defendants also object to several costs sought. Defendants contend that copy costs, computer research, postage and delivery are not permitted by statute or court rule. Defendants note that Michigan follows the "American rule" with respect to the payment of costs and attorney fees, citing *Haliw, supra*.

Plaintiff counters that costs are allowed, unless prohibited, citing MCR 2.625.

Unlike the award of case evaluation sanctions, the award of taxable costs to the prevailing party is within the trial court's discretion. MCR 2.625(A)(1) provides that costs will be allowed to the prevailing party in an action, unless prohibited by statute or by the court rules or unless the court directs otherwise, for reasons stated in writing and filed in the action. [Emphasis provided by the Court.] The taxation of costs under MCR 2.625 serves the purpose of reimbursing a prevailing party for costs incurred during litigation. *Blue Cross & Blue Shield of Michigan v Eaton Rapids Community Hospital*, 221 Mich App 301; 561 NW2d 488 (1997); *Wells v Dep't of Corrections*, 447 Mich. 415, 419, 523 NW2d 217 (1994). The power to tax costs is not unlimited however; rather, it is wholly statutory. *Beach v State Farm Mutual Auto Ins Co*, 216 Mich App 612; 550 NW2d 580 (1996). As stated, MCL 600.2421b defines "costs and fees" as "the normal costs incurred in being a party in a civil action."

9/1/06 Order

Clearly, the costs sought for copy costs, computer research, postage and delivery are normal costs incurred in a civil action. Accordingly, the Court finds that Plaintiff is entitled to such costs.

WHEREFORE IT IS HEREBY ORDERED that Plaintiff's motion for case evaluation sanctions is granted pursuant to MCR 2.403.

IT IS FURTHER ORDERED that Plaintiff's motion for costs is granted pursuant to MCR 2.625.

The Court will sign a Judgment consistent with this opinion.

STEVEN N. ANDREWS

STEVEN N. ANDREWS, Circuit Judge

A TRUE COPY
RUTH JOHNSON
Oakland County Clerk / Register of Deeds
By: _____
Deputy

11/13/07 Order

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

NIRAN HAMAMA,

Plaintiff,

vs.

CASE NO: 2006-076107-NF
Hon: Steven N. Andrews

ASHLEY JEAN SHELTON and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign insurance company,

Defendants.

HORENSTEIN LAW OFFICES
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(248) 443-1919

ROBERT J. WENDZEL (P24151)
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Attorney for Plaintiff
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Southfield, MI 48075
(248) 569-7200

SCARFONE & GEEN, P.C.
Debra Witkowski (P36416)
Attorney for Defendant State Farm
18000 Mack Ave.
Grosse Pointe, MI 48230
(313) 343-6600

ORDER GRANTING MOTION FOR AMENDED JUDGMENT TO INCLUDE NO-FAULT SANCTION ATTORNEY FEES, TAXABLE COSTS AND INTEREST, IN ADDITION TO DAMAGES AWARDED BY VERDICT, AND ENTRY OF FINAL JUDGMENT

At a session of said Court, held in the City of Pontiac, County of Oakland, State of Michigan,
On NOV 13 2007
PRESENT: HON STEVEN N. ANDREWS
CIRCUIT COURT JUDGE

THIS MATTER having come before the Court on Plaintiff's Motion for Entry of Judgment Including Interest, Taxable Costs and No-Fault Penalty Attorney Fees, briefs having been filed and arguments heard, and the court having made the following rulings, findings of fact and conclusions of law:

11/13/07 Order

Plaintiff having successfully prosecuted her claim for wage loss, medical expenses and replacement services pursuant to the Michigan No-Fault Automobile Insurance Act and, the Jury having determined that benefits were more than 30 days overdue warranting penalty interest, NOW THEREFORE

IT IS HEREBY ORDERED that Plaintiff's Motion for Amended Judgment, to include No-Fault Penalty Attorney Fees, Taxable Costs and Interest, in addition to Damages awarded by Verdict, is granted.

IT IS HEREBY ORDERED that the Medical Expenses in the amount of $30,200.33, Work loss in the amount of $21,000.00 and Replacement Services in the amount of $9,100.00, as awarded by Jury Verdict, are approved and awarded by the Court.

IT IS HEREBY ORDERED that the penalty interest, for overdue benefits, in the amount of $7,236.00, is approved and awarded by the Court.

IT IS HEREBY ORDERED the Court has factually determined that State Farm Mutual Automobile Insurance Company acted unreasonably, and for the reasons stated on the record, Plaintiff is entitled to reasonable attorney fees pursuant to MCL 500.3148.

IT IS HEREBY ORDERED that the Court has reviewed the affidavits submitted by the attorneys of record and factually determined that the reasonable value of the attorneys' fees of Robert J. Wendzel and Raymond Horenstein are $500.00 per hour.

IT IS HEREBY ORDERED that the Court having reviewed and considered the itemization of attorney fees claimed and affidavits and proofs submitted hereby approves and awards $70,100.00 as a reasonable attorney fee.

IT IS FURTHER ORDERED that Plaintiff's taxable costs in the amount of $5,011.25 are approved and awarded by the Court

IT IS FURTHER ORDERED that RJA pre-judgment interest is awarded from the date of the filing of the Complaint through the date of entry of Final Judgment and that said interest is ~~properly~~ calculated and awarded in the amount of $5,292.10.

IT IS FURTHER ORDERED that Final Judgment shall enter in favor of Plaintiff and

11/13/07 Order

against Defendant in the amount of $147,939.65.

Defendant having satisfied the Civil Judgment, dated October 24, 2007, by payment of $67,536.33 as reflected by the Partial Satisfaction of Judgment dated October 17, 2007.

IT IS FURTHER ORDERED that the Final Judgment amount owed by the Defendant to the Plaintiff as of the date of this Order is in the amount of $80,403.35.

THIS IS A FINAL ORDER AND RESOLVES THE LAST PENDING CLAIM IN THIS CASE AND CLOSES THE CASE.

STEVEN N. ANDREWS

CIRCUIT COURT JUDGE

Approved as to form:

ROBERT J. WENDZEL P24151

DEBRA WITKOWSKI P36416

A TRUE COPY
RUTH JOHNSON
County Clerk - Register of Deeds

15a

11/13/07 Order

against Defendant in the amount of $147,939.65.

Defendant having satisfied the Civil Judgment, dated October 24, 2007, by payment of $67,536.33 as reflected by the Partial Satisfaction of Judgment dated October 17, 2007.

IT IS FURTHER ORDERED that the Final Judgment amount owed by the Defendant to the Plaintiff as of the date of this Order is in the amount of $80,403.35.

THIS IS A FINAL ORDER AND RESOLVES THE LAST PENDING CLAIM IN THIS CASE AND CLOSES THE CASE.

CIRCUIT COURT JUDGE

Approved as to form:

ROBERT J. WENDZEL P24151

Debra M Witkowski

DEBRA WITKOWSKI P36416

16a